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WISCONSIN EMPLOYMENT RELATIONS COMMISSION  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION  
BEFORE THE ARBITRATOR

In the Matter of the Arbitration:  
of a Dispute Between

BROWN COUNTY (SHERIFF'S DEPART-  
MENT)

and

AWARD AND DECISION

BROWN COUNTY SHERIFF-TRAFFIC  
DEPARTMENT LABOR ASSOCIATION

Case No. CLIII  
No. 29531 MIA-667  
Decision No. 20167-A

Hearing Date March 22, 1983

Appearances:

For the Employer

MR. KENNETH J. BUKOWSKI,  
Corporation Counsel

For the Union

Parins, McKay and Mohr, S.C.,  
Attorneys at Law, by  
MR. FREDERICK J. MOHR

Arbitrator

MR. ROBERT J. MUELLER

Date of Award

June 23, 1983

BACKGROUND

The above-entitled matter came on for hearing before the undersigned who was selected as the sole arbitrator to hear the dispute from a panel furnished by the Wisconsin Employment Relations Commission. The parties were present at the hearing and were afforded full opportunity to present such evidence, testimony and arguments as they deemed relevant. Post-hearing briefs were exchanged through the arbitrator.

The within matter arose as a result of impasse in negotiations between the parties. A petition was thereupon filed to initiate final and binding arbitration involving law enforcement personnel. By virtue of the statutory standing of this case, the arbitrator is obligated to issue a final and binding award in the matter pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act.

The parties had reached agreement on all matters with the exception of one matter involving the promotion procedure to be utilized in the new agreement. In reaching a decision, being that of choosing either the Employer's final offer or the Association's final offer, the arbitrator is obligated to give consideration and weight in reaching such decision to those factors specified in Section 111.77(6) of the Wisconsin Statutes.

## FINAL OFFERS

### ASSOCIATION FINAL OFFER:

Promotion to positions of a sergeant and sergeant investigator shall be determined by the following promotional procedure. The criteria for promotions shall be twofold. An initial examination of an officer's past performance shall be made. This examination shall consist of a review of the past record of job evaluations of the officer seeking promotion. Job evaluations shall be made on each officer in the bargaining unit on a quarterly basis. The evaluations shall provide ratings on specific areas of job performance and shall be graded on a scale from unsatisfactory to excellent. Each officer shall be given a copy of his job evaluation within five (5) days of its completion. In the event that the officer disagrees with any aspect of the job evaluation, such officer may grieve his rating through the grievance procedure as provided for in the labor agreement. Any rating of unsatisfactory on the job evaluation must be documented by management.

If a candidate for promotion has a satisfactory record on his job performance evaluations, he shall be eligible for promotion. All officers who receive such rating shall be given promotions on the basis of seniority once the above qualifications are met.

Once an officer receives a promotion, said officer shall be on probation for a period of six months. At the end of six months if management takes no steps to reduce the rank of said officer, said officer shall retain his permanent position and rank. In the event that management feels that said officer is not qualified for the position during such probationary period, management will set forth its reasons in writing and provide said officer with a copy thereof. If an officer is found unqualified during such probationary period, said officer may appeal such findings by means of the grievance procedure.

### COUNTY FINAL OFFER:

#### Article 12. PROMOTIONS

The promotion procedure will include an evaluation of skills and past performance as well as seniority. The procedure will include:

- (a) A written examination prepared and administered outside the department.
- (b) An oral interview by a panel of management level officers from other law enforcement agencies.
- (c) An evaluation of an employee's past performance in the Sheriff's or Traffic Department, using the results of the formalized performance evaluation system for the previous three years.

The final eligibility list will be compiled by the Personnel Department and will be based on four factors:

- 1) Written examination performance
- 2) Oral interview performance
- 3) Past work performance as shown on formal evaluation
- 4) Experience, as shown by seniority in a grade

The weightings of the factors are:

<u>Promotional Criteria</u>	<u>1982</u>
Written Examination	20%
Oral Interview	15%
Performance Evaluation	40%
Seniority	<u>25%</u>
TOTAL	100%

The Personnel Department will disseminate the final results to each applicant. The Sheriff or traffic chief, as appropriate, will appoint applicants from the list to fill available positions.

#### ARGUMENT OF THE PARTIES AND DISCUSSION

The County argued in its brief that in their view, the statutory factor that is subject to the greatest consideration and weight in this case is factor (b), which is the comparison of conditions of employment (in this case promotional policies) with employees in public employment in comparable communities and in private employment in comparable communities.

The County contends that the most relevant comparables to which consideration should be given are those other counties and the sheriff and traffic department promotional policies that exist in each of such other "county" relationships. The Employer refers to the law of comparability as being well settled and determined by virtue of a prior decision by Arbitrator Gunderman involving Winnebago County Sheriff's Department. They point out that in such case the arbitrator concluded that counties are not comparable communities to cities. As such he concluded that he was compelled to consider other counties as comparables, as opposed to cities and their law enforcement departments or agencies.

The County further points out that in spite of the Union's attempt to contend that the county police department has always strove for and has maintained parity in all controlling respects with the law enforcement department of the City of Green Bay, that the two labor agreements contain significant differences. Such differences indicate that the two are not wholly comparable and that there exists numerous differences which require different contractual agreements as to the employees' rights and the Employer's obligations with respect to such areas of difference.

The Association also contends that the primary factor to be considered under Section 111.77 of the Wisconsin Statutes is comparability. They contend, however, that the Brown County Sheriff-Traffic Department has maintained wage parity with the City of Green Bay Law Enforcement Department for decades. Additionally, the Association contends that the majority of benefits and substantive provisions of the two contracts are identical in many respects and substantially similar in those where differences exist.

As a further argument for comparability to the City of Green Bay, the Association points out that 23 members of the 46 member County Board also sit on the Green Bay City Council. One-half of the individuals thus voting on County matters then constitute the same individuals who also may vote on similar matters involving the City of Green Bay.

The County pointed out that a promotion policy when seniority was not the sole determining factor had been held reasonable and valid in an arbitration involving the Brown County Mental Health Center. In such case, more weight was given to test results and lesser recognition was afforded the seniority standing of the employee.

The Association also argues that the County's proposed promotional policy would afford an employee no avenue to challenge an unfavorable job performance evaluation similar to their right to challenge a performance evaluation such as is provided by the Association proposal. As a result of the County's proposal, an employee could be blacklisted by an evaluation by his supervisor

without any safeguards or opportunity to challenge such supervisor's action.

The Association contends that the testimony of both the chief of the traffic division and the sheriff of the sheriff's division, acknowledge that the most important and revealing aspect of an employee's job performance and potential is such employee's past performance.

Finally, the Association argues that the County's proposal is unclear and indefinite. They state with regard to the measurement of seniority in their brief, as follows:

"Seniority under the County's proposal is open to complete speculation. Is the County proposing that a man receive one point for every year up to 25 years? Is the County proposing that a man should receive five points for every year after ten years up to 15 years? There is nothing specific in the County's proposal to indicate how seniority is to be utilized in its consideration for promotion."

Dealing first with the issue as to which comparables should be given controlling weight, the undersigned notes with interest the emphatic type language utilized by Arbitrator Gunderman that has been cited by the County concluding that he is obligated only to utilize only comparisons of a county department to other counties and their corresponding departments. While such finding and conclusion appears to have been stated in rather simplistic and definite terms, if one were to adopt such statement as the law on comparability, one would be in violation of 111.77(6)(d) which sets forth the comparability factor. Such factor states as follows:

"(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

"1. In public employment in comparable communities.

"2. In private employment in comparable communities."

One must specifically note that (6) states that, "In reaching a decision the arbitrator shall give weight to the following factors:." The statute thereafter lists factors (a) through (h). There is nothing in such statute that specifies priority of one factor over another. The charge to the arbitrator is that the arbitrator "shall" give weight to the following factors. It is perfectly obvious that where no dispute exists or evidence exists that bears upon a particular listed factor, that it shall be given consideration but that the consideration shall be of an equal weight to both final offers. For instance, the average consumer price for goods and services identified as factor (e) simply does not impact upon which promotional procedure offer is to be preferred. As such, consideration of such factor leads one to conclude that neither final offer gains favor or preference because of application of that specific factor.

Returning then to an examination of what the County contends is the law of comparability as set forth by Arbitrator Gunderman, the undersigned must differ with the County's interpretation of Arbitrator Gunderman's statement. It may be that he strongly stated such finding for a number of reasons other than the single conclusion that the County is contending should be drawn from his

decision. I can find nothing within the statute that directs that preference be given to one set of comparables to the exclusion of any other set or single comparable. It appears that all are to be considered and that it is simply left to the arbitrator to afford the degree of weight that is deemed most properly assessible to one comparable or set of comparables as opposed to others.

Applying such interpretation of the statute to the arguments presented by the parties in this case, the undersigned is of the judgment that the Association has established by persuasive evidence that the most weight from a comparative standpoint should be afforded to that of the City of Green Bay and its law enforcement department. The evidence fairly shows that there is a significant overlap of governing body personnel. While there exists differences between the working conditions such as hours, overtime provisions, retirement, vacations, clothing allowance, and life insurance, there exists significant parity and similarity in many other substantive areas of the two contracts. Simply because there are various differences with respect to some fringes and conditions of employment between the County and the City law enforcement units, does not necessarily serve to imply that promotional policy and procedure in the County should be significantly different from that of the City. There simply is no correlation between the differences in some areas to the question of whether or not there should be differences with respect to the promotion procedure. To the contrary, where the contracts are similar and/or identical in many other substantial and significant areas, it would appear that absent specific evidence indicating unfair or poor experiences under one type of promotional procedure and evidence indicating that a different proposed procedure would be better, there would appear to be no persuasion to award a new and different promotion procedure over an existing one.

The undersigned is of the judgment that the Association's contention that the County's proposal is inexact and somewhat ambiguous with respect to the measurement of or weight to be given certain criteria, contains substantial merit. The County's proposal simply does not specify in what way seniority is to be measured. Do they mean that an employee with four year's of seniority would be given the same or lesser credit than a fifteen year employee as against an applicant of two year's seniority? Such item is simply not addressed to a sufficient degree to be subject to any definitive interpretation or judgment and the undersigned deems the County's final offer to be lacking significantly in detail on such point.

The County presented excerpts of promotional policies in effect in the law enforcement departments of other counties. The arbitrator has reviewed the book of exhibits containing such other contracts. It appears that a number do utilize written examinations as a part of the promotional procedure. There also appears to be a number who utilize oral interviews. There appears to be a significant variation, however, with respect to the manner in which seniority is considered and the weight that seniority is afforded in the various relationships.


In the current relationship between the parties to this dispute, the Association's proposal effectively affords significant weight and consideration to the respective seniority of employees. The County's proposal, on the other hand, constitutes a significant swing to the other side of the spectrum and would appear to place seniority in a significantly downgraded status. It would appear that the highest ranking applicant would

not be assured an appointment to an available position. All their proposal says is that the sheriff or traffic chief will appoint applicants from the list to fill available positions. There is nothing that requires the appointment to be in order of ranking. Simply attaining the list would qualify one for appointment regardless of the relative total score after application of the promotional criteria. Clearly, the County's proposal serves to nullify seniority as an objective consideration to a significant degree. While the arbitrator can understand and cannot disagree with the County's desire to obtain a promotional procedure that would insure as closely as humanly possible an objective manner of ranking numerous applicants for a position so that the County could place into such position the "most" qualified, it appears that their final proposal in this case, while attempting to attain such goal, serves to reduce the criteria of seniority to a point where its consideration is insignificant and clearly where its consideration is imprecise and indefinite.

On the basis of the above facts and discussion thereon, and from a consideration of the total record evidence and arguments of the parties as applied and considered within the statutory factors of (a) through (h) of Section 111.77(6) of the Wisconsin Statutes, the undersigned comes to the following finding and decision. The undersigned hereby awards as follows:

AWARD

That the final offer of the Association is hereby selected and the parties are directed to incorporate it into the Collective Bargaining Agreement along with the previously agreed upon terms thereof.

  
Robert J. Mueller  
Arbitrator

Dated at Madison, Wisconsin  
this 23rd day of June, 1983.